

Application of City of East Helena
Water Reservation No. 71895-41I

II. FINDINGS OF FACT

A. FINDINGS ON THE QUALIFICATION OF CITY OF EAST HELENA TO RESERVE WATER (Mont. Code Ann. § 85-2-316(1)(1991); ARM 36.16.107B(1)(a).)

1. The City of East Helena is an incorporated municipality and a subdivision of the State of Montana. (Bd. Exh. 14-A, p. 1; Mont. Code Ann. § 85-2-316(1), ARM 36.16.107B(1)(a).)

2. The City of East Helena has applied for a water reservation of 258 acre-feet/year (af/yr) of water with a maximum diversion rate of .93 cubic feet/second (cfs) to be diverted from McClellan Creek or withdrawn from the Helena valley groundwater by a proposed well for year round use. (Bd. Exh. 14-A, pp. 3, 5.)

3. The City of East Helena requested a water reservation to meet future demands by municipal and industrial users. (Bd. Exh. 14-A, p. 3.)

B. FINDINGS ON THE PURPOSE OF THE WATER RESERVATION APPLIED FOR BY THE CITY OF EAST HELENA (Mont. Code Ann. § 85-2-316(4)(a)(1991); ARM 36.16.107B(1)(b).)

4. The City of East Helena seeks to provide municipal water for future growth in a cost-effective manner. Sound planning requires providing users with an adequate water supply. The term of the water reservation is to year 2025. (Bd. Exh. 14-A, p.5.)

5. The purpose of the reservation is to provide the water for municipal and industrial uses. (Bd. Exh. 14-A, p. 3.) Municipal and industrial uses are beneficial uses of water in Montana. (Mont. Code Ann. § 85-2-102(2)(a), ARM 36.16.102(3); ARM 36.16.107B(1)(b).)

C. FINDINGS ON THE NEED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF EAST HELENA (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

6. East Helena's McClellan Creek infiltration gallery, and the Jackson, Lost and Crystal Creeks collection system and the city's Prickly Pear well field presently provides up to 2.7 cfs of water to the City of East Helena. (Bd. Exh. 14-A, p. 32.) The reservation water requested would be delivered from the McClellan Creek infiltration gallery (up to .93 cfs) or from a new well in the city well field located 2 miles north of East Helena along Prickly Pear Creek (up to .93 cfs). (Bd. Exh. 14-C, pp. 1, 3.)

7. A reservation is the only means to obtain an early priority date for water that will be needed to meet projected municipal and industrial growth. In the future, water may be appropriated by competing agricultural, industrial, and instream users. (Bd. Exh. 40, p. 249; Bd. Exh. 14-A, p. 6.)

8. It is important that the City of East Helena have a water reservation to meet future municipal and industrial water demands in order for the community to prosper and develop. (Bd. Exh. 14-A, p. 3 A.)

9. Competing water uses may prevent the City of East Helena from obtaining or perfecting a water use permit in the future. Without a reservation, the City of East Helena may have to go through a costly process of buying or condemning existing water rights to meet increasing demands. (Bd. Exh. 40, p. 249.)

D. FINDINGS ON THE AMOUNT OF WATER NEEDED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF EAST HELENA (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

10. The method of determining the amount of water requested for a water reservation by the City of East Helena was based on a forecast of its future population to the year 2025 along with the estimated amount of water used per person. (Bd. Exh. 40, p. 35.) The methodology used by the City of East Helena projected an average annualized (compounded population growth rate) of approximately 1.30 percent. (Bd. Exh. 40, p. 236.) The 1990 population of East Helena was 1,538. (Bd. Exh. 40, p. 236.) The City of East Helena's population forecast for the year 2025 was 2,938 people. (Bd. Exh. 40, p. 236.)

11. The populations recorded in the 1990 census indicate that East Helena has grown at an annualized rate of .11 percent per year over the past 30 years (1,490 people in 1960 to 1,538 people in 1990). (Bd. Exh. 14-C, p. 11.)

12. The City of East Helena has a noticeable rate of leakage of 100 gallons per person per day (estimated 29 percent leakage rate). (Bd. Exh. 14-A, pp. 22-23.) However, these distribution system leakages are expected to be reduced to approximately 30 gallons per person per day. (Bd. Exh. 14-C, p. 2; Bd. Exh. 14-A, p. 24.) The City of East Helena expects its future average per capita water usage will be 250 gallons per person daily, which is typical of basin use rates (Bd. Exh. 14-A, pp. 22, 24.) The McClellan Creek water source is an unreliable late summer supply, is a tributary of Prickly Pear Creek which is highly appropriated, and could not provide additional water unless storage is built. (Bd. Exh. 14-B, p. 3.)

13. None of the City of East Helena water services are metered at present. (Bd. Exh. 14-A, p. 22.) The City of East

Helena has no plans to initiate metering in the near future. (Bd. Exh. 14-C, p. 4.)

14. The water use efficiencies associated with the municipal and industrial uses by the City of East Helena are reasonable. (ARM 36.16.107B(3)(b).)

15. No other cost-effective measure could be taken within the reservation term to increase the use efficiency by the City of East Helena and lessen the amount of water required for the purpose of the reservation. (ARM 36.16.107B(3)(b).)

E. FINDINGS THAT THE WATER RESERVATION APPLIED FOR BY THE CITY OF EAST HELENA IS IN THE PUBLIC INTEREST (Mont. Code Ann. § 85-2-316(4)(a)(iv)(1991); ARM 36.16.107B(4).)

16. Benefits of the City of East Helena's water reservation were calculated on a willingness-to-pay basis. East Helena used a \$1.50/1,000 gallons value. (Bd. Exh. 14-A, p. 39.) Helena municipal users are currently paying \$2.47/1,000 gallons. (Bd. Exh. 40, p. 253.)

17. The additional water provided by the water reservation will cost approximately \$.92/1,000 gallons. (Bd. Exh. 14-A, p. 39.)

18. The direct benefits of the City of East Helena's water reservation exceed the direct costs. (ARM 36.16.107B(4)(a).)

19. Indirect benefits of the City of East Helena's reservation may include secondary economic benefits to the community and to the state, and expanding both the property and income tax base from increased population. (Bd. Exh. 14-A, p. 41.)

20. Indirect costs of the reservation may include loss of opportunity for other development and increased administrative costs. While not quantified these costs are minor. (Bd. Exh. 14-A, p. 40.)

21. There is no significant adverse environmental impact associated with the use of the City of East Helena's water reservation. (Bd. Exh. 14-C, p. 6.) The effects of individual municipal water reservation depletions on water quality have not been quantified (Board Exhibit 40, pp. 253 - 254), but should be very small. Resulting health risks have not been quantified. No other non-quantifiable benefits or costs were identified. (Bd. Exh. 14 - A.)

22. Net benefits of granting the City of East Helena's water reservation exceed the net benefits of not granting the

water reservation and the project is economically feasible. (ARM 36.16.107B(4)(b); ARM 36.16.102(9).)

23. The City of East Helena identified one alternative sources of water for future development, the Helena Valley Regulating Reservoir. This alternative would not provide greater net benefits than the water reservation, (Bd. Exh. 14-A, pp. 35-36) and is not reasonable. (ARM 36.16.107B(4)(c).)

24. Failure to reserve water for future municipal and industrial use by the City of East Helena is likely to result in an irretrievable loss of a resource development opportunity. (Bd. Exh. 14-A; ARM 36.16.107B(4)(d).)

25. As conditioned, the City of East Helena's water reservation will have no significant adverse impact to public health, welfare, or safety. (ARM 36.16.107B(4)(e).)

F. OTHER FINDINGS RELATING TO BOARD DECISION (Mont. Code Ann. § 85-2-316(3)(B), (4)(a)(iv)(b), (5), (6), and (9)(e)(1991); ARM 36.16.107B(5) through (8).)

26. The water reservation by the City of East Helena will be used wholly within the state and within the Missouri River basin. (Bd. Exh. 14-A; ARM 36.16.107B(5) and (6).)

27. The City of East Helena has identified a management plan for the design, development, and administration of its water reservation. (Bd. Exh. 14-A, pp. 43-52.)

28. The City of East Helena is capable of exercising reasonable diligence towards feasibly financing the project and applying reservation water to beneficial use in accordance with the management plan. (ARM 36.16.107B(7).)

29. The priority date of the City of East Helena's water reservation is July 1, 1985. (§ 85-2-331(4).)

30. As conditioned, the City of East Helena's water reservation will not adversely affect any senior water rights. (ARM 36.16.107B(8).)

31. The public interest in protecting domestic and stockwater rights with a priority date on or after July 1, 1985 and perfected prior to the final date of this Order outweighs the values protected by the municipal reservations.

III. CONCLUSIONS OF LAW

1. City of East Helena is a qualified applicant for a water reservation. (Mont. Code Ann. § 85-2-316(1)(1991).)

2. The purpose of the City of East Helena's application is a beneficial use. (Mont. Code Ann. § 85-2-316(4)(a)(i)(1991); ARM 36.16.107B(1)(b).)
3. The need for the City of East Helena has been established. Specifically, the City has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose of its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)
4. The methodologies and assumptions used by the City of East Helena are suitable but not accurate under present conditions. (ARM 36.16.107B(3)(a).) A more accurate population projection for the year 2025 for the City of East Helena is 1,700 based on an annualized growth rate of .30 percent per year. As modified, the City of East Helena has established the amount of water needed to fulfill its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)
5. Based on a weighing and balancing of the evidence, the reservation by the City of East Helena as modified herein is in the public interest. (Mont. Code Ann. § 85-2-316(4)(a)(iv); ARM 36.16.107B(4).)
6. Upper Missouri River water reservations approved by the Board shall have a priority date of July 1, 1985. (Mont. Code Ann. § 85-2-331(4).) The Board may determine the relative priorities of all reservations. (Mont. Code Ann. § 85-2-316(a)(e).)
7. The Board may grant, deny, modify, or condition any reservation applied for. In no case may the Board make a reservation for more than the amount applied for. (Mont. Code Ann. § 85-2-316.)
8. The Board has no authority under the reservation statutes or any other statutes to determine, or alter any water right that is not a reservation. (Mont. Code Ann. § 85-2-316(14).)

IV. ORDER

1. Subject to all applicable modifications, conditions, and limitations (including but not limited to the conditions applied to consumptive use reservations in Exhibits A and B attached to this Order) the application of the City of East Helena is granted for the following amount and flow of water: .93 cfs and 258 af/year from a well diverting Helena valley groundwater.

2. The point of diversion and place of use are from the well set forth in the reservation application City of East Helena and by reference are made a part of this Order.

3. The reservation is adopted subject to being perfected by December 31, 2025.

4. Relative to other reservations the priority date of the reservation shall be ahead of any other non-municipal reservation granted with a priority date of July 1, 1985. The reservation shall have equal priority with all other reservations granted to all municipalities.

5. Any and all liability arising from the reservation or the use of the reservation is the sole responsibility of the applicant. By granting such reservations, the Board on behalf of itself and the Department of Natural Resources and Conservation assumes no liability.